

Remarks/Arguments

Claims 1-5 and 11 were rejected under 35 USC 103(a) as being unpatentable over Danishefsky et al in view of Bollag and Choy. Applicant requests reconsideration and withdrawal of this rejection for the reasons that follow.

The Examiner's attention is directed to the following journal articles that were first submitted with the Amendment filed on April 15, 2009: (1) B. Hofstetter et al, Clinical Cancer Research, Vol. 11, 1588-1596 (2005) and (2) C. Bley et al, Clinical cancer Research, Vol. 15(4), 1335-1342 (2009). An additional copy of each is attached, but no PTO-1449 form is included because the publications are not prior art to this application.


These journal articles provide data which demonstrates a supra-additive effect against certain cancer cells when patupilone (a.k.a. epothilone B, the compound of formula (I) specified in claim 3) and ionizing radiation are combined. This data supports the patentability of the presently claimed invention by demonstrating an unexpected benefit from combining patupilone and radiation therapies in the treatment of cancer.

Applicant further asserts that the combined disclosure of the references merely suggests a field for further research. Bollag at page 871 is clear that the value of epothilones and discodermolide in combination with agents such as radiation should be explored. However, the references would not lead the skilled artisan to reasonably expect success other than by stating a hypothesis that needs to be tested by experimentation. Therefore, the present claims are patentable over the combined disclosure of the references.

Entry of this amendment and reconsideration and allowance of the claims are respectfully requested.

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Respectfully submitted,


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Enc. B. Hofstetter et al, Clinical Cancer Research, Vol. 11, 1588-1596 (2005)
C. Bley et al, Clinical cancer Research, Vol. 15(4), 1335-1342 (2009)